

Internal Revenue Service
memorandum

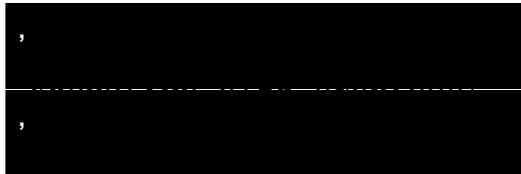
date: **AUG 07 1991**

to: Director, Internal Revenue Service Center
Kansas City, MO
Attn: Entity Control

from: Technical Assistant
Employee Benefits and Exempt Organizations

subject: CC:EE:3 - TR-45-967-91
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] is not an employer under the Railroad Retirement Act and the Railroad Unemployment Tax Act.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment:
Copy of letter from Railroad Retirement Board

cc: Mr. Gary Kuper
Internal Revenue Service
200 South Hanley
Clayton, MO 63105

08634

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

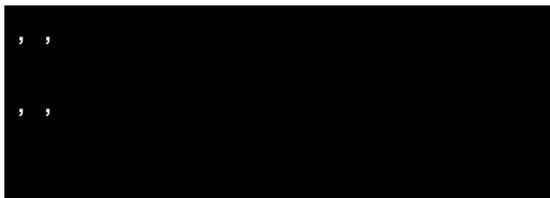
Assistant Chief Counsel
(Employee Benefits and
Exempt Organizations)
Internal Revenue Service
1111 Constitution Avenue., N.W.
Washington, D.C. 20224

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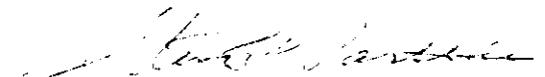
Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,


Steven A. Bartholow
Deputy General Counsel

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Enclosure

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UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

MEMORANDUM

MAY 30 1991

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED]
Employer Status

This is in response to your Form G-215 dated March 8, 1991, requesting my opinion regarding the status of [REDACTED], as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

In an Interstate Commerce Commission decision of [REDACTED], [REDACTED] was granted a retroactive exemption from the prior approval requirements of the Interstate Commerce Act for [REDACTED]'s control of [REDACTED], and [REDACTED]. [REDACTED] and [REDACTED] are both employers under the Acts administered by the Board (B.A. numbers [REDACTED] and [REDACTED], respectively).

[REDACTED] is a closely-held corporation that primarily manufactures paper products and owns [REDACTED] manufacturing plants in the Midwest and Southwest. Due to a threatened loss of service because of the [REDACTED] bankruptcy, [REDACTED] acquired interests in certain railroads including the [REDACTED] and [REDACTED], in which [REDACTED] now has a majority interest and [REDACTED] percent interest, respectively. [REDACTED] represented to the Interstate Commerce Commission and [REDACTED], Executive Vice President, reiterated in a letter dated [REDACTED], in response to your request for information that it has no management responsibilities in connection with the two railroads and that it has functioned only as an investor in (and, presumably, customer of) those railroads. [REDACTED] further stated that no employees of the railroad report to any employee of [REDACTED] nor do they work alongside any [REDACTED] employees. [REDACTED] advises that it receives less than [REDACTED] percent of its total revenue from these two railroads.

Director of Research and Employment Accounts

[redacted] had previously, around [redacted], organized the [redacted] an employer under the Acts administered by the Board (B.A. number [redacted]), to purchase and operate over certain former [redacted] lines; the [redacted] operates over a [redacted] mile line between [redacted] and [redacted], and over a [redacted] mile line between [redacted] and [redacted]. In [redacted], [redacted] acquired control of [redacted], also an employer under the Acts administered by the Board (B.A. number [redacted]). [redacted] operates [redacted] miles of rail and rail-related property between [redacted] and [redacted] in [redacted].

In a telephone conversation on [redacted], [redacted], legal counsel for [redacted], advised that [redacted] does not provide any services for any railroads. Services such as hiring, preparation of payroll records, et., for railroads in which [redacted] has a controlling or other interest are done locally and not by [redacted].

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer," in pertinent part, as follows:

"The term 'employer' shall include--

"(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

"(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *."

Section 202.5 of the Board's regulations (20 CFR 202.5) defines a company under common control with a carrier as one controlled by the same person or persons which control a rail carrier. The Board has determined that a parent company may be under common control with its subsidiaries within the terms of this provision. See Appeal of ITEL Corporation, Board Order 82-140,

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reversed on other grounds, Itel Corporation v. United States Railroad Retirement Board, 710 F. 2d 1243 (7th Cir. 1983). The absence of actual exercise of that control does not determine whether common control as provided in section 1(a)(1)(ii) exists; the right or power to exercise control is sufficient; see section 202.4 of the Board's regulations.

Based on the above, it is my opinion that [REDACTED] is under common control with a railroad employer by reason of its substantial ownership interest in [REDACTED] and [REDACTED], and its ownership of [REDACTED] and [REDACTED].

The question then becomes whether [REDACTED] performs a service in connection with railroad transportation. Section 202.7 of the regulations (20 CFR 202.7) defines a service as in connection with railroad transportation if it is reasonably directly related, functionally or economically, to the performance of rail carrier obligations. The evidence of record shows that [REDACTED] is engaged principally in manufacturing paper products, a non-rail-related activity, and that it performs no services for [REDACTED] or [REDACTED] or for any other rail-related company, including [REDACTED] and [REDACTED]. On this basis, I conclude that [REDACTED] is not an employer under the Acts for the reason that it does not operate any equipment or facility or perform any service in connection with transportation of passengers or property by railroad.

An appropriate Form G-215 is attached.



Steven A. Bartholow

Attachment

V.L. [REDACTED]
MCLitt:mcl:aam
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